

The Honorable Robert S. Lasnik

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ARRIVALSTAR S.A. and MELVINO
TECHNOLOGIES LIMITED,

Plaintiffs,

v.

AGILITY LOGISTICS, INC., LOGISTICAL
MANAGEMENT SOLUTIONS, LC., MATSON
INTEGRATED LOGISTICS, INC.,
MICROLISE ENGINEERING LIMITED,
NEXXIO TECHNOLOGIES, LLC, TRAK-IT
SOLUTIONS, INC., ULTRA LOGISTICS,
INC., VERISIGN, LLC, WLG, LLC,

Defendants.

Civil Action No. 2:10-cv-01249-RSL

**DEFENDANT WLG'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Pursuant to Rules 7, 8, and 12 of the Federal Rules of Civil Procedure, improperly named Defendant WLG, LLC ("WLG") generally denies the allegations of the Plaintiffs' First Amended Complaint, asserts affirmative defenses, and further states as follows:

1. WLG admits that this purports to be a patent infringement case and that the Court has subject matter jurisdiction over the claims.

2. WLG lacks knowledge and information sufficient to answer these allegations and thus denies the allegations on that basis.

1 3. WLG lacks knowledge and information sufficient to answer these allegations and
2 thus denies the allegations on that basis.

3 4. WLG lacks knowledge and information sufficient to answer these allegations and
4 thus denies the allegations on that basis.

5 5. WLG lacks knowledge and information sufficient to answer these allegations and
6 thus denies the allegations on that basis.

7 6. WLG lacks knowledge and information sufficient to answer these allegations and
8 thus denies the allegations on that basis.

9 7. WLG lacks knowledge and information sufficient to answer these allegations and
10 thus denies the allegations on that basis.

11 8. WLG lacks knowledge and information sufficient to answer these allegations and
12 thus denies the allegations on that basis.

13 9. WLG lacks knowledge and information sufficient to answer these allegations and
14 thus denies the allegations on that basis.

15 10. WLG lacks knowledge and information sufficient to answer these allegations and
16 thus denies the allegations on that basis.

17 11. WLG lacks knowledge and information sufficient to answer these allegations and
18 thus denies the allegations on that basis.

19 12. The allegations of this paragraph concern a different party defendant and WLG need
20 not answer them. To the extent any answer is required, WLG lacks knowledge and information
21 sufficient to answer the allegations and thus denies the allegations on that basis.

22 13. The allegations of this paragraph concern a different party defendant and WLG need
23 not answer them. To the extent any answer is required, WLG lacks knowledge and information
24 sufficient to answer the allegations and thus denies the allegations on that basis.
25
26

1 14. The allegations of this paragraph concern a different party defendant and WLG need
2 not answer them. To the extent any answer is required, WLG lacks knowledge and information
3 sufficient to answer the allegations and thus denies the allegations on that basis.

4 15. WLG denies that there is an entity called WLG, LLC. WLG also denies that
5 Plaintiffs are asserting all the indicated patents against WLG. Those allegations are erroneous. On
6 December 3, 2010, Plaintiffs' Complaint was dismissed, because the "indirect infringement, direct
7 infringement, and willful infringement allegations in the Complaint against WLG fall well short of
8 the standards set forth in the recent Supreme Court cases of *Twombly* and *Iqbal* and do not provide
9 sufficient facts to satisfy the pleading requirements of Fed. R. Civ. P. 8(a)." (Docket No. 25). In
10 filing the Amended Complaint against WLG, Plaintiffs have elected to assert only the '781 and
11 '359 patents against WLG and have dropped the other patents for failure to provide sufficient
12 factual detail. Plaintiffs' counsel, Phil Mann, has confirmed that paragraphs 38-56 of the Amended
13 Complaint are correct in reflecting the fact that Plaintiffs are *only asserting* the '781 and '359
14 patents against WLG at this time. (See Email from Mann to Beattie, attached as **Exhibit A**).

15 16. The allegations of this paragraph concern a different party defendant and WLG need
16 not answer them. To the extent any answer is required, WLG lacks knowledge and information
17 sufficient to answer the allegations and thus denies the allegations on that basis.

18 17. The allegations of this paragraph concern a different party defendant and WLG need
19 not answer them. To the extent any answer is required, WLG lacks knowledge and information
20 sufficient to answer the allegations and thus denies the allegations on that basis.

21 18. The allegations of this paragraph concern a different party defendant and WLG need
22 not answer them. To the extent any answer is required, WLG lacks knowledge and information
23 sufficient to answer the allegations and thus denies the allegations on that basis.

1 19. The allegations of this paragraph concern a different party defendant and WLG need
2 not answer them. To the extent any answer is required, WLG lacks knowledge and information
3 sufficient to answer the allegations and thus denies the allegations on that basis.

4 20. The allegations of this paragraph concern a different party defendant and WLG need
5 not answer them. To the extent any answer is required, WLG lacks knowledge and information
6 sufficient to answer the allegations and thus denies the allegations on that basis.

7 21. WLG lacks knowledge and information sufficient to answer the allegations and thus
8 denies the allegations on that basis. WLG notes that virtually all of the Defendants that settled
9 with Plaintiffs failed to timely answer or to file a motion under Rule 12 and could have been
10 defaulted at any time.

11 22. WLG lacks knowledge and information sufficient to answer the allegations and thus
12 denies the allegations on that basis. WLG notes that virtually all of the Defendants that settled
13 with Plaintiffs failed to timely answer or to file a motion under Rule 12 and could have been
14 defaulted at any time.

15 23. There are no factual allegations in this paragraph that need to be answered. To the
16 extent, there are any, WLG denies them. WLG also notes that once Plaintiffs investigated their
17 case, they declined to assert several patents against WLG that they had originally asserted.

18 24. WLG concedes that this Court has subject matter jurisdiction over this case, but does
19 not concede that the Court has jurisdiction over WLG or that venue is proper or appropriate in this
20 Court. It is not clear that there is any plausible accused activity in this jurisdiction.

21 25. The allegations of this paragraph concern a different party defendant and WLG need
22 not answer them. To the extent any answer is required, WLG lacks knowledge and information
23 sufficient to answer the allegations and thus denies the allegations on that basis.

1 26. The allegations of this paragraph concern a different party defendant and WLG need
2 not answer them. To the extent any answer is required, WLG lacks knowledge and information
3 sufficient to answer the allegations and thus denies the allegations on that basis.

4 27. The allegations of this paragraph concern a different party defendant and WLG need
5 not answer them. To the extent any answer is required, WLG lacks knowledge and information
6 sufficient to answer the allegations and thus denies the allegations on that basis.

7 28. The allegations of this paragraph concern a different party defendant and WLG need
8 not answer them. To the extent any answer is required, WLG lacks knowledge and information
9 sufficient to answer the allegations and thus denies the allegations on that basis.

10 29. The allegations of this paragraph concern a different party defendant and WLG need
11 not answer them. To the extent any answer is required, WLG lacks knowledge and information
12 sufficient to answer the allegations and thus denies the allegations on that basis.

13 30. The allegations of this paragraph concern a different party defendant and WLG need
14 not answer them. To the extent any answer is required, WLG lacks knowledge and information
15 sufficient to answer the allegations and thus denies the allegations on that basis.

16 31. These allegations are not particularly relevant to this lawsuit. WLG denies that it
17 helps business to source or develop. WLG admits that the second sentence is substantially correct.
18 WLG essentially arranges transportation for other persons and entities. "Non-asset based"
19 highlights that WLG does not have its own fleet of planes, ships, trains, and trucks. "Flexible
20 cargo management" is not a description of WLG's internet tracking system; it is a reflection of
21 WLG's personnel and experience. The first sentence is correct to the extent it focuses on arranging
22 transport for third parties. All other allegations of paragraph 31 are denied.

23 32. Again, there is no WLG, LLC. WLG otherwise admits the allegations of paragraph
24 32.

33. Denied. "Internet tracking system" is a generic description, not the name of any program, as Plaintiffs were already told in WLG's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) (Docket No. 20). WLG's central server is located in Hong Kong, China. More than 99% of its shipments involve at least some travel *outside the jurisdiction of the United States and its patent laws*. WLG arranges for shipments using *other companies' ships, airplanes, trucks, and trains*. WLG does not own a fleet of ships, planes, trucks, or trains and thus has no vehicles with "vehicle control units" as required by some patent claims. WLG does not know if any of the vehicles it uses has a transmitter of the kind described in the patents-in-suit, but any such transmitters do not interact in any way with WLG's tracking system. WLG's "tracking system" does not provide substantially contemporaneous information about the location of any vehicles carrying any of WLG's freight. It does not provide an automated "progress report" at any time during transit. WLG uses a CARGOWISE program that has existed for many years. On information and belief, that program has already survived infringement analysis under the patents-in-suit. WLG is a mere licensee under that CARGOWISE program and probably has rights to contribution and/or indemnification from CARGOWISE on that basis. Under these facts, it is hard to conceive how WLG could infringe any valid claim of any of the patents-in-suit or why ArrivalStar is suing WLG. WLG previously put ArrivalStar on notice that it has "a Rule 11 obligation to look into these facts and to take them into account **before** it files an amended complaint." Plaintiffs have failed to undertake such an investigation.

34. The last sentence is essentially correct and is admitted, if properly understood to be aspects of WLG's business acumen, and not of its internet tracking system. The first sentence is incorrect, particularly if attributed to WLG's internet tracking system. Decision-making power is not put in the hands of the customer, and customers do not determine the best methods for information exchange. All other allegations are denied.

1 35. Denied. As disclosed in WLG's Motion to Dismiss Complaint Under Fed. R. Civ. P.
2 12(b)(6), these allegations are completely wrong. For example, WLG does not have any vehicles,
3 has no way of "monitoring the travel data" of vehicles, and does not provide contemporaneous
4 information about vehicle position. Customers do not enter information.

5 36. Denied. Completely wrong as previously indicated in WLG's Motion to Dismiss.

6 37. Denied.

7 38. Denied. It is crystal clear that WLG's internet tracking system does not infringe
8 claim 21 of the '359 patent or any other claims of the asserted patents.

9 39. WLG admits that this paragraph does trace *some* language of the cited claim. But
10 infringement analysis requires that an accused process meet all limitations of a claim. WLG
11 denies that its internet tracking system meets the cited claim limitation or has the properties
12 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.

13 40. WLG admits that this paragraph does trace *some* language of the cited claim. But
14 infringement analysis requires that an accused process meet all limitations of a claim. WLG
15 denies that its internet tracking system meets the cited claim limitation or has the properties
16 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.

17 41. WLG admits that this paragraph does trace *some* language of the cited claim. But
18 infringement analysis requires that an accused process meet all limitations of a claim. WLG
19 denies that its internet tracking system meets the cited claim limitation or has the properties
20 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.
21 For example, the WLG system does not monitor vehicle travel data.

22 42. WLG admits that this paragraph does trace *some* language of the cited claim. But
23 infringement analysis requires that an accused process meet all limitations of a claim. WLG
24 denies that its internet tracking system meets the cited claim limitation or has the properties
25 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.
26

1 43. WLG admits that this paragraph does trace *some* language of the cited claim. But
2 infringement analysis requires that an accused process meet all limitations of a claim. WLG
3 denies that its internet tracking system meets the cited claim limitation or has the properties
4 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.
5 For example, it does not provide real time information.

6 44. Denied. It is crystal clear that WLG's internet tracking system does not infringe
7 claim 1 of the '781 patent or any other claims of the asserted patents.

8 45. WLG admits that this paragraph does trace *some* language of the cited claim. But
9 infringement analysis requires that an accused process meet all limitations of a claim. WLG
10 denies that its internet tracking system meets the cited claim limitation or has the properties
11 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.
12 For example, the WLG system does not monitor vehicle travel data.

13 46. WLG admits that this paragraph does trace *some* language of the cited claim. But
14 infringement analysis requires that an accused process meet all limitations of a claim. WLG
15 denies that its internet tracking system meets the cited claim limitation or has the properties
16 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.
17 For example, the WLG system does not monitor vehicle travel data, does not receive updated
18 status information, and does not compare scheduled timing with actual timing data (since such data
19 is not collected).

20 47. WLG admits that this paragraph does trace *some* language of the cited claim. But
21 infringement analysis requires that an accused process meet all limitations of a claim. WLG
22 denies that its internet tracking system meets the cited claim limitation or has the properties
23 ascribed to it. As noted in WLG's motion to dismiss, its system simply does not do these things.
24 For example, the WLG system does not monitor vehicle travel data and does not automatically
25 generate messages about vehicle delay.
26

1 48. WLG admits that there is a system with that name, but denies that it meets any
2 claims of the asserted patents or has the cited features.

3 49. Denied. The cited system does not monitor vehicle data information and does not
4 provide any information about vehicle timing changes at destination.

5 50. Denied. The system does not do these things.

6 51. Denied. The system does not infringe claim 1 of the '781 patent or any other claims
7 of the asserted patents.

8 52. WLG admits that this paragraph does trace *some* language of the cited claim. But
9 infringement analysis requires that an accused process meet all limitations of a claim. WLG
10 denies that the cited system meets the cited claim limitation or has the properties ascribed to it. For
11 example, the system does not monitor vehicle travel data.

12 53. WLG admits that this paragraph does trace *some* language of the cited claim. But
13 infringement analysis requires that an accused process meet all limitations of a claim. WLG
14 denies that the cited system meets the cited claim limitation or has the properties ascribed to it. For
15 example, the system does not monitor vehicle data.

16 54. WLG admits that this paragraph does trace *some* language of the cited claim. But
17 infringement analysis requires that an accused process meet all limitations of a claim. WLG
18 denies that the cited system meets the cited claim limitation or has the properties ascribed to it. For
19 example, the system does not monitor vehicle data.

20 55. WLG lacks knowledge and information sufficient to answer the allegations and thus
21 denies the allegations on that basis. WLG notes that Plaintiffs have dropped six of the patents that
22 they initially asserted, which means that their early assessment of the case was completely wrong.

23 56. Denied.
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1 57. The allegations of this paragraph concern a different party defendant and WLG need
2 not answer them. To the extent any answer is required, WLG lacks knowledge and information
3 sufficient to answer the allegations and thus denies the allegations on that basis.

4 58. The allegations of this paragraph concern a different party defendant and WLG need
5 not answer them. To the extent any answer is required, WLG lacks knowledge and information
6 sufficient to answer the allegations and thus denies the allegations on that basis.

7 59. The allegations of this paragraph concern a different party defendant and WLG need
8 not answer them. To the extent any answer is required, WLG lacks knowledge and information
9 sufficient to answer the allegations and thus denies the allegations on that basis.

10 60. The allegations of this paragraph concern a different party defendant and WLG need
11 not answer them. To the extent any answer is required, WLG lacks knowledge and information
12 sufficient to answer the allegations and thus denies the allegations on that basis.

13 61. The allegations of this paragraph concern a different party defendant and WLG need
14 not answer them. To the extent any answer is required, WLG lacks knowledge and information
15 sufficient to answer the allegations and thus denies the allegations on that basis.

16 62. The allegations of this paragraph concern a different party defendant and WLG need
17 not answer them. To the extent any answer is required, WLG lacks knowledge and information
18 sufficient to answer the allegations and thus denies the allegations on that basis.

19 63. The allegations of this paragraph concern a different party defendant and WLG need
20 not answer them. To the extent any answer is required, WLG lacks knowledge and information
21 sufficient to answer the allegations and thus denies the allegations on that basis.

22 64. The allegations of this paragraph concern a different party defendant and WLG need
23 not answer them. To the extent any answer is required, WLG lacks knowledge and information
24 sufficient to answer the allegations and thus denies the allegations on that basis.

65. The allegations of this paragraph concern a different party defendant and WLG need not answer them. To the extent any answer is required, WLG lacks knowledge and information sufficient to answer the allegations and thus denies the allegations on that basis.

66. The allegations of this paragraph concern a different party defendant and WLG need not answer them. To the extent any answer is required, WLG lacks knowledge and information sufficient to answer the allegations and thus denies the allegations on that basis.

PLAINTIFFS' PRAYER FOR RELIEF

Defendant WLG denies that it infringes, that the asserted claims are valid, or that Plaintiffs are entitled to any of the relief requested in their Prayer for Relief. WLG further requests that the First Amended Complaint be dismissed.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendant WLG also asserts the following affirmative defenses to the Plaintiffs' First Amended Complaint:

FIRST AFFIRMATIVE DEFENSE **(Lack of Personal Jurisdiction)**

1. Defendant WLG denies that the Court has personal jurisdiction over it. WLG is not a Washington company, has not appointed an agent for receipt of services here, and has not committed any infringing actions here or elsewhere.

SECOND AFFIRMATIVE DEFENSE **(Improper Venue)**

2. Defendant WLG denies that venue is proper or convenient in Washington State.

THIRD AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

3. Defendant WLG denies that Plaintiff's Complaint states a cause of action against WLG for which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE
(Non-infringement)

4. Defendant WLG insists that it has not infringed and does not infringe, directly or indirectly, and literally or under the doctrine of equivalents, any valid claim of the two patents asserted against WLG – the '359 patent or the '781 patent, or any other patent asserted by Plaintiffs in this case.

FIFTH AFFIRMATIVE DEFENSE
(Invalidity)

5. Defendant WLG alleges that all claims of the two patents asserted against it, the '359 patent or the '781 patent, are invalid because they fail to satisfy the requirements of the U.S. patent laws, including (without limitation) 35 U.S.C. §§ 101, 102, 103 or 112.

SIXTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

6. Defendant WLG contends that one or more of Plaintiffs' claims are barred by equitable defenses, including the doctrine of laches, unclean hands, license, acquiescence, and waiver.

SEVENTH AFFIRMATIVE DEFENSE
(Failure to Mark)

7. Defendant WLG contends that Plaintiffs' claims for damages are barred in whole or in part by Plaintiffs' or Plaintiffs' licensees' failure to satisfy the requirements of 35 U.S.C. § 287(a).

EIGHTH AFFIRMATIVE DEFENSE
(Limitations on Damages)

8. Defendant WLG contends that Plaintiffs' claim for patent infringement is limited by 35 U.S.C. § 286. WLG also asserts that Plaintiffs cannot claim lost profits damages, or other measures of damages, because they do not practice the patents at issue.

NINTH AFFIRMATIVE DEFENSE**(Standing)**

9. Defendant WLG contends that Plaintiffs' claim for patent infringement may fail for lack of standing, if assignments were not properly drafted and signed or if the wrong persons or entities own the patents or are suing.

TENTH AFFIRMATIVE DEFENSE**(Unenforceability)**

10. Defendant WLG contends that the asserted patents are unenforceable because of failure to pay maintenance payments or other reasons. Discovery will determine if there is evidence of fraud on the Patent Office or other additional grounds for asserting this affirmative defense.

ELEVENTH AFFIRMATIVE DEFENSE**(Mitigation)**

11. To the extent Plaintiff, or others in privity with Plaintiff, may have been damaged, those damages were caused by Plaintiff's own failure to mitigate.

TWELTH AFFIRMATIVE DEFENSE**(Extraterritoriality)**

12. U.S. patent law generally extends, with few exceptions, only to activities occurring within the United States. Defendant WLG contends that Plaintiffs are attempting to seek damages for events occurring outside the United States, in violation of U.S. patent law.

THIRTEENTH AFFIRMATIVE DEFENSE**(Sanctions/Exceptional Status/Contempt)**

13. It is plain that Plaintiffs failed to undertake the required pre-suit investigation before filing the Complaint. In going from the Complaint to the Amended Complaint, Plaintiffs dropped six patents, clear evidence that those six patents were wrongly asserted initially. Additionally, Plaintiffs have violated the Court Order Granting Defendant WLG's Motion to

Dismiss (Docket No. 25), which ordered Plaintiffs to do a proper investigation before filing an Amended Complaint and to only assert patent claims against WLG if they had "a good faith basis for believing that WLG really infringes those claims." WLG believe that Plaintiffs have violated that order, and that Plaintiffs' litigation conduct entitles WLG to attorneys' fees under 35 U.S.C § 285 and sanctions under various provisions.

FOURTEENTH AFFIRMATIVE DEFENSE

(Other Defenses)

14. Defendants reserve the right to add other affirmative defenses prior to trial.

COUNTER CLAIMS

Defendant WLG does not assert counterclaims at this time, but reserves the right to do so in an amended pleading at any appropriate time through resolution of this matter.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant WLG requests trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Defendant WLG respectfully asks this Court to grant any or all the following relief:

- A. An order dismissing all of Plaintiffs' claims and its First Amended Complaint;
- B. A judgment against Plaintiffs declaring all claims of the '781 and '359 patents to be invalid under one or more provisions of the U.S. patent laws;
- C. A judgment against Plaintiffs declaring that WLG does not infringe any claim of the '781 and '359 patents;
- D. A judgment against WLG declaring all claims of the '781 and '359 patents to be unenforceable under one or more provisions of the U.S. patent laws;
- E. Dismissal of this case for lack of personal jurisdiction, improper venue, improper service of process or improper process, or other similar issues;

1 F. An injunction against Plaintiffs forbidding them from asserting all claims of the '781
2 and '359 patents against any other persons or entities;

3 G. Attorneys' fees and costs under 35 U.S.C. § 285 or other applicable provision, if
4 appropriate;

5 H. Sanctions if appropriate for failing to undertake an adequate pre-suit investigation or
6 for advancing spurious claims or engaging in vexatious litigation;

7 I. Interest if appropriate; and

8 J. Any other relief the Court deems to be just and warranted.

9
10 Dated this 28th day of February, 2011

11 Respectfully submitted,

12
13 s/ Paul H. Beattie
14 Paul H. Beattie, WSBA # 30277
15 **Merchant & Gould P.C.**
16 701 Fifth Avenue, Suite 4100
17 Seattle, Washington 98104
18 Tel: (206) 342-6200
19 Fax: (206) 342-6201
20 E-mail: pbeattie@merchantgould.com
21 *Attorney for Defendant WLG*
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February 2011, I served a true and correct copy of
DEFENDANT WLG'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT
on the following persons, at the following address, by the indicated method:

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Management Solutions LLC*

by:

<input type="checkbox"/>	U.S. Postal Service, ordinary first class mail
<input type="checkbox"/>	U.S. Postal Service, certified or registered mail,
<input type="checkbox"/>	return receipt requested
<input type="checkbox"/>	hand delivery to:
<input type="checkbox"/>	facsimile
<input checked="" type="checkbox"/>	electronic service through the CM/ECF court system
<input type="checkbox"/>	other (specify)



Kayla E. Butcher